

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
LITIGATION RECOVERY TRUST)
)
Petition for a Determination Whether Comsat)
Corporation Has Violated the Public Interest)
Standard of the Communications Satellite Act,)
47 U.S.C. § 701 Through the Transmission of)
Indecent Material or Violated 47 U.S.C. § 721)
Through Unauthorized Purchases of Stock in)
Specified Corporations)

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2002

Released: October 28, 2002

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we deny a request by Litigation Recovery Trust (“LRT”)¹ for a declaratory ruling that Comsat had violated the public interest standards of

¹ LRT represents claims by William L. Whitely, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations (“CRISO”) and BelCom Minority Shareholders and Claimants Committee (“BelCom Committee”). In 1998, Comsat successfully brought legal action in Delaware Chancery Court against a former defendant shareholder of BelCom, Scott Robb, who is one of those represented by LRT. The court found that Robb was in breach of fiduciary duty “through repeated acts motivated by self interest and bad faith,” including submitting “millions of dollars in frivolous bills to BelCom” and by a well-orchestrated campaign of harassment as a means of coercing payment” *BelCom, Inc. v. Scott Robb*, Del. Civil Action No. 14663 (April 28, 1998), *aff’d sub nom. Scott Robb v. BelCom, Inc.*, 725 A.2d 443 (Jan. 20, 1999), rehearing denied (Feb. 11, 1999). In 2001, the Delaware Chancery court denied William Whitely’s motion to vacate the 1998 *BelCom* decision and a sanctions *Order* issued February 21, 2001. *BelCom v. Robb*, Del. Ch. Case No. 14463, *Order*, August 21, 2001. A New York court has disbarred Scott Robb for conduct arising from actions against BelCom. *In re Robb*, M-646 (N.Y. App. Div. June 21, 2000), *aff’d per curiam*, 731 N.Y.S. 2d 437 (N.Y. App. Div. 2001). In affirming its June 21 order, the Court stated, among other things, that it found that Robb “had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation” 731 N.Y.S. 2d at 438. And, the United States Court for the Southern District of New York has (1) dismissed a Securities Act claim brought by LRT against Comsat, *Whitely v. Comsat*, S.D.N.Y. *Order*, Case No. 00 Cir. 9401 (October 29, 2001); and (2) dismissed LRT’s complaint against Comsat, which made various allegations under federal and state law. *Whitely v. Comsat*, S.D.N.Y., Case No. 00 Cir. 9401, *Memorandum and Order* (September 24, 2001).

the Communications Satellite Act (“Satellite Act”)² through the alleged transmission and dissemination of “obscene, indecent and pornographic films” to hotels in the United States and foreign countries.³ In addition, LRT asks the Commission to determine that Comsat violated Section 201(c)(8) of the Satellite Act because, in order to establish a closed-circuit network to distribute the above-referenced indecent material, Comsat purchased stock interests in several companies, including On Command Video Corp. (“On Command”) and SpectraVision, Inc. (“SpectraVision”), without seeking the advance approval of the Commission required by that section.⁴ LRT asks us to find these stock acquisitions to be illegal and to constitute separate and distinct violations of the Satellite Act. For these alleged violations, LRT asks us to impose “suitable sanctions, penalties and forfeitures (including fines in an amount of at least \$25 million) against Comsat and Lockheed, to ensure that licensee conduct involving repeated statutory violations is sanctioned and future potential wrongdoers are appropriately deterred.”⁵ Finally, LRT asks the Commission to resolve expeditiously a petition for proposed rulemaking filed on December 3, 1995, by one member of LRT, William Whitely, that sought adoption of a rule restricting access to “adult” programming transmitted by satellite to public venues such as hotels.⁶

2. Lockheed Martin Global Telecommunications (“LMGT”) seeks dismissal of LRT’s petition due to alleged discrepancies in the certificate of service associated therewith.⁷ Further, LMGT argues that LRT’s petition is moot because Comsat divested itself of its hotel in-room entertainment business in 1997.⁸ Additionally, LMGT argues that Section 201(c)(8) was repealed by the 2000 ORBIT Act.⁹ LMGT argues that the question of whether Comsat needed authorization under Section 201(c)(8) to acquire On Command and SpectraVision is *res judicata*. LMGT states that the

² 47 U.S.C. §§ 701-57 (2001).

³ Litigation Recovery Trust, Petition for Declaratory Ruling, filed November 17, 2001, at p.16 (*LRT Petition*).

⁴ *Id.*

⁵ *Id.* at 23.

⁶ William L. Whitely, Petition for Proposed Rulemaking, “*In the Matter of Distribution of Adult Movies and Other Indecent Programming via Satellite and Closed Circuit Transmission Systems Including Broadcast TV Signals*” (“*Whitely Petition*”), filed December 3, 1995. Subsequently, on June 18, 1996, Whitely filed a document entitled “Supplement to Petition for Proposed Rulemaking and Request for Expedited Consideration” that noted that the merger of On Command and SpectraVision was then before the Federal Trade Commission and thus was of interest to the FCC in acting on the Whitely Petition.

⁷ Letter from Keith H. Fagan, Counsel for LMGT, to Jane Mago, General Counsel, FCC, dated November 21, 2001, at p. 1 (“*LMGT Letter*”).

⁸ See LMGT Letter at 1, note 3, citing a letter from Warren Y. Zeger, Vice President, General Counsel and Secretary, Comsat Corp., to Peter Cowhey, Chief, International Bureau, FCC, a copy of which was attached to the LMGT Letter.

⁹ The Open-Market Reorganization for the Betterment of International Telecommunications (“ORBIT”) Act, 47 U.S.C. § 765(a) (2001).

Commission determined in a 1998 Order¹⁰ that Comsat was not required to obtain advance Commission approval under Section 201(c)(8) of the Satellite Act for stock purchases because, since 1983, the Commission has reviewed and approved periodic requests by Comsat for a comprehensive Capitalization Plan. Because such Capitalization Plan broadly covers Comsat's projected capital needs, use of the plan allowed the Commission to dispense with ad hoc authorizations of stock acquisitions falling within the parameters of the Capitalization Plan. Finally, LMGT argues that the LRT petition is an abuse of process. LMGT asserts that it was submitted not for any legitimate purpose but to harass Comsat. In support of its argument, LMGT cites a case in the Supreme Court of Delaware¹¹ that held that Scott Robb, a member of LRT, had engaged in harassment through a large number of frivolous filings against Comsat. In this regard, LMGT notes that it had filed motions to dismiss two previous LRT petitions¹² and asked the Commission to incorporate those motions into Comsat's response, should the Commission decide to act on this petition.

3. LRT characterizes LMGT's letter as an unauthorized pleading designed to avoid raising the visibility of this proceeding. LRT further argues that the letter is not responsive to LRT's petition as it was addressed to the Commission's General Counsel, rather than to the Commission. LRT argues that LMGT's letter represents an attempt to avoid addressing the issues LRT raised by focusing on alleged procedural defects in LRT's pleading. LRT argues in any event that the Commission's General Counsel does not have the authority to dismiss a petition addressed to the Commission. LRT argues that LMGT has, therefore, failed to respond to LRT's arguments and asks the Commission to issue a directed ruling granting LRT the relief it seeks in this petition.

II. DISCUSSION

4. We reject both LRT's and LMGT's procedural challenges. Notwithstanding its contention that LRT failed to comply with the letter of the Commission's document-service rules, LMGT acknowledges that it received the petition in time for it to prepare an opposition. We, therefore, conclude that LMGT has not been substantially harmed by any possible irregularities. Similarly, we find that LRT has not been harmed by any possible defect in LMGT's letter. Even though LMGT addressed the letter to the Commission's General Counsel, LRT received the letter in sufficient time to prepare a substantive response. Because we find that LMGT's letter was responsive to LRT's petition, we turn to LRT's request for a "directed ruling" that Comsat has violated the Satellite Act.

¹⁰ In the Matter of Comsat Corporation, *et al.*, *Memorandum Opinion and Order*, FCC 07-422, 13 FCC Rcd 2714, 2726 (1998) (*Consolidated Order*), *recon. denied*, 15 FCC Rcd 19,516 (2000). LMGT noted that the Court of Appeals dismissed LRT's appeal of that Order after LRT failed to file a brief by the date specified in the court's (sixth) scheduling order. *Whitely v. FCC*, Case No. 00-4207 (2d Cir., June 1, 2001).

¹¹ See *BelCom v. Robb supra.* n. 1.

¹² See Comsat Corporation, "Motion to Dismiss Petition for Declaratory Ruling" at 1-2 (filed Nov. 2, 2001), which was filed against LRT's "Petition for Declaratory Ruling In the Matter of Litigation Recovery Trust, Petition for a Declaratory Ruling Seeking a Determination that Comsat Corporation Has Violated the Satellite Act in Making Acquisitions of Stock in Various Other Companies." LRT filed its petition on October 8, 2001. See also Comsat Corporation, "Motion to Dismiss Petition for Reconsideration" (filed Nov. 7, 2001), filed by LRT seeking reconsideration of the Commission's Order in Comsat Corporation d/b/a Comsat Mobile Communications, *et al.*, *Memorandum Opinion and Order*, FCC 01-272, 16 FCC Rcd 21,661 (rel. Oct. 9, 2001) (*Comsat Compliance Proceeding*).

5. **Stock Purchases.** We are not persuaded that Comsat violated Section 201(c)(8) of the Satellite Act by failing to obtain advance approval for the acquisition of interests in On Command and Spectra Vision. The Commission has already decided that Comsat did not need prior authorization under Section 201(c)(8) for every acquisition of stock. In its 1998 *Consolidated Order*, denying petitions filed by LRT against Comsat raising this and other issues, the Commission held that Comsat's acquisition of BelCom, Inc., without specific prior authorization under the Satellite Act, did not violate that Act.¹³ The Commission based its holding in that case on the fact that it had decided, beginning in 1983, to enforce Section 201(c)(8) through approval of a comprehensive capitalization plan for Comsat, rather than through separate approvals of each individual proposed transaction.¹⁴ The Capitalization Plan allowed Comsat to set forth projections of its capital needs for the period covered by the plan. By approving the plan, the Commission allowed Comsat to acquire specific amounts of capital as it needed them, without further approval, so long as the acquisitions fell within the scope of the plan. In approving the 1983-85 Capitalization Plan, the Commission acknowledged that Comsat was embarking upon an expansion of its unregulated activities, such as the acquisition of stock in hotel in-room entertainment companies at issue herein, and concluded that the capitalization plan approach would allow it to monitor such expansions to ensure that they did not endanger Comsat's ability to carry out its regulated business.¹⁵ The United States Court of Appeals for the Second Circuit dismissed LRT's appeal of the *Consolidated Order* and LRT's motion to reinstate its review petition before the court.¹⁶ In three recent actions denying or dismissing LRT petitions in Comsat-related proceedings, we rejected LRT's attempt to re-raise this argument on the ground that the Commission had previously rejected it and that the court had upheld such action on appeal.¹⁷

6. We take the same action yet one more time in this proceeding. We find nothing in LRT's current petition that would require us to change the Commission's conclusion regarding the sufficiency of the capitalization plan approach to regulate Comsat's financial activities. Comsat did not need to seek authorization under Section 201(c)(8) of the Satellite Act to acquire stock in On Command

¹³ In the *Consolidated Order*, 13 FCC Rcd at 2726, the Commission held that Comsat's acquisition of the stock in BelCom did not violate Section 201(c)(8) of the Satellite Act because such acquisitions were within the parameters of the capitalization plan under which Comsat operated at the time.

¹⁴ In the Matter of The Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation, *Memorandum Opinion and Order*, FCC 83-273, 94 FCC 2d 1149, 1157 (1983).

¹⁵ *Id.* at 1158-9.

¹⁶ *William L. Whitely, et al v. FCC*, Case No. 00-4207 (2d Cir., June 1, 2001). The Court dismissed LRT's petition for review on June 1, 2001, for failure to prosecute. On June 25, 2001, the court dismissed LRT's motion to reinstate its petition for review. On August 24, 2001, the court denied LRT's request that it reconsider its order to dismiss LRT's original petition for review. In that order, the court also granted the Commission's request that the court require LRT to pay the Commission's attorney's fees.

¹⁷ In the Matter of Lockheed Martin Corporation, *et al.*, *Order on Reconsideration*, FCC 02-197, 17 FCC Rcd 13,160 (rel. July 5, 2002); In the Matter of Litigation Recovery Trust Petition for Declaratory Ruling Seeking a Determination that Comsat Corporation has Violated the Satellite Act in Making Acquisitions of Stock in Various Other Companies, *Memorandum Opinion and Order*, FCC 02-199, 17 FCC Rcd 13,175 (rel. July 5, 2002); In the Matter of Lockheed Martin Global Telecommunications, *et al.*, *Order on Reconsideration*, FCC 02-207, 17 FCC Rcd 14,030 (rel. July 12, 2002).

or SpectraVision. Accordingly, we deny this aspect of LRT's petition.

7. **Indecent Material.** We are also unpersuaded that Comsat's prior ownership and operation of On Command and SpectraVision violated the public interest standard of the Satellite Act.¹⁸ These two companies were in the business of what Comsat calls "hotel in-room entertainment services."¹⁹ In performing such services, Comsat delivered movies and other video programming by satellite to hotels, where such programming was delivered to individual rooms by internal networks of coaxial cables. LRT states that the programming provided by such services typically consist of "hit movies" that are not yet available to the home video market and "adult" entertainment, by which it means "X-rated and unrated movies including material often found to contain indecent and [in] some cases obscene material."²⁰ LRT alleges that the programming On Command and SpectraVision transmitted included material that it variously describes as "pornographic,"²¹ "indecent"²² and "obscene."²³ LRT argues that transmission of such material, in a way that does not prevent viewing by minors, violates a standard of conduct allegedly imposed on Comsat under the Satellite Act.

8. At the outset, we note that the services provided by Comsat through its subsidiaries were not broadcast services. Rather, the services provided were on a closed circuit basis within the confines of particular hotels. Such subscription-based services do not call into play the issue of indecency.²⁴ LRT has not shown any evidence that a court has adjudged that any programming of On Command or SpectraVision is or was "obscene." It merely makes conclusory assertions that the material was in fact obscene or indecent. The unsupported allegations do not justify the declaratory relief sought by LRT. In addition, we note that Comsat divested itself of the subsidiaries at issue in 1997. We see no

¹⁸ LRT notes that Comsat entered the film-distribution business through the purchase of the satellite network serving Holiday Inns, called HiNet, which it operated through its Comsat Entertainment (CE) division. *LRT Petition* at 5, fn 11. LRT states that Comsat later acquired On Command Video Corp, which it also merged into CE. *Id.* LRT states that Comsat subsequently sold 20 percent of the stock in CE to the public and renamed it Ascent Entertainment Group (AEG). *Id.* LRT further states that Comsat subsequently acquired SpectraVision and merged it also into AEG. *Id.* at 3, fn 6. LRT states that, at that point, AEG served approximately 1 million hotel rooms. *Id.*

¹⁹ *LMGT Letter* at 1.

²⁰ *LRT Petition* at 4. LRT states that "upwards of 50 percent of the pay-per view titles usually offered by such services are 'adult,'" and that industry sources have asserted that adult titles generate "upwards of 75 percent of gross revenues."

²¹ *LRT Petition* at 4, 7-9, 16-20 and 22.

²² *Id.* at 1-4, 6-7, 16, 18, 21.

²³ *Id.* at 4.

²⁴ *See* In the Matter of Applications of Harriscop of Chicago, Inc., *et al.*, *Memorandum Opinion and Order*, MM Docket No. 83-575, 3 FCC Rcd 757, 760 n. 2 (1988) (*Video 44*). *Cf.* In the Matter of Enforcement Policies Regarding Broadcast Indecency, *Policy Statement*, FCC 01-90, 16 FCC Rcd 7999, 8000 and n. 9 (2001) (noting that courts have recognized that the "special justifications" for regulating the broadcast of indecent material—its history of pervasive regulation, the scarcity of broadcast frequencies and broadcast's "invasive" nature—do not apply to other speakers).

compelling reason to revisit their programming from before this divestiture.²⁵

9. LRT also contends, however, that its argument does not require a finding that the material transmitted by On Command or SpectraVision was legally obscene. Rather, LRT argues that Comsat's participation in the transmission of "adult" entertainment was "morally reprehensible"²⁶ and that it violated the "public interest standard" of the Satellite Act.²⁷ The Commission has not previously interpreted the public interest standard to proscribe the transmission of "adult" programming that was not otherwise unlawful pursuant to statute or regulation, and we decline to do so here.

10. **Whitely Petition.** Finally, we turn to LRT's request that we act expeditiously on the Whitely Petition that it asserts has been pending since December 1995. Because Comsat no longer owns On Command or SpectraVision, the Whitely petition is irrelevant to the issues raised in the LRT petition before us. More importantly, however, we note that the Commission has already dismissed the Whitely Petition. In footnote 51 of the *Comsat Restructuring Order*, the Commission stated that it declined to initiate the rulemaking requested in the Whitely Petition.²⁸ As a result, we need take no further action on the petition here.

III. OTHER MATTERS

11. We note the following with regard to LMGT's claims that LRT and/or its members' primary aim is to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute involving the LRT members and Comsat. We take LMGT's claims very seriously. As described earlier in this Order, there has been a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate advocacy. In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if they file pleadings primarily for abusive purposes.²⁹ These sanctions could include restrictions on participation in Commission proceedings to prevent abuse of its processes.³⁰ In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests."³¹ The Commission has authorized its Bureaus

²⁵ See *Video 44*, 3 FCC Rcd at 759.

²⁶ *LRT Petition* at 2.

²⁷ *Id.* at 8.

²⁸ See *In the Matter of Lockheed Martin Corporation, et al., Order and Authorization*, FCC 00-277, 15 FCC Rcd 22,910, 22,919, n. 51 (2000) (*Comsat Restructuring Order*).

²⁹ See, e.g., *In re Application of Nationwide Communications, Inc., Memorandum Opinion and Order*, FCC 98-7, 13 FCC Rcd 5654, 5655-56 (1998) (*Nationwide Communications*).

³⁰ See, e.g., *In re Applications of Radio Carrollton, et al., Memorandum Opinion and Order*, Docket Nos. 19636 and 19637, 69 FCC 2d 1138, 1148-55 (1978).

³¹ *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966).

and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes.³² Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. In this regard, a pleading filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the proceeding in which they are filed, is a situation that would justify a summary dismissal of such pleading.³³ Alternatively, should a party engage in such an abusive course of conduct before the agency, the Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a prior showing of public interest.³⁴ We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency. In addition, we warn LRT and/or its members that we may consider imposing other sanctions authorized by the Communications Act.³⁵

IV. CONCLUSION

12. For the reason shown above, we conclude that LRT has not shown that Comsat violated the provisions of Section 201(c)(8) of the Satellite Act in acquiring and operating On Command or SpectraVision. We have also concluded that LRT has not shown that On Command or SpectraVision engaged in the transmission of obscene or indecent material during the period that Comsat owned them or that Comsat's operation of those subsidiaries violated the Communications Act or the Satellite Act. As a result, we conclude that LRT has not shown that Comsat violated the public interest standard of the Satellite Act.

³² See Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings, FCC 96-42, 11 FCC Rcd 3030 (1996).

³³ See *Nationwide Communications*, 13 FCC Rcd at 5655-56.

³⁴ See *In re Martin-Trigona*, 592 F. Supp. 1566, 1568 (D. Conn. 1984); *In re Notice to John Cervase*, Letter from Vincent J. Mullins, Secretary, FCC, by direction of the Commission, FCC 75-891, 54 FCC 2d 1039 (1975).

³⁵ See, e.g., 47 U.S.C. § 312(a) (2001).

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that the above-captioned Petition for Declaratory Ruling of Litigation Recovery Trust is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary